

**STATE OF SOUTH CAROLINA**

**(Caption of Case)**

**Proceeding to Establish Guidelines for an Intrastate  
Universal Service Fund (USF)**

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

**COVER SHEET**

**DOCKET**

**NUMBER: 1997 - 239 - C**

(Please type or print)

**Submitted by:** Margaret M. Fox

**SC Bar Number:** 65418

**Address:** McNair Law Firm, P. A.

**Telephone:** 803-799-9800

P. O. Box 11390

**Fax:** 803-753-3219

Columbia, SC 29211

**Other:** \_\_\_\_\_

**Email:** pfox@mcnair.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

**DOCKETING INFORMATION** (Check all that apply)

☐ **Emergency Relief demanded in petition** ☐ **Request for item to be placed on Commission's Agenda expeditiously**

☐ **Other:** \_\_\_\_\_

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input checked="" type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

MCNAIR LAW FIRM, P.A.

ATTORNEYS AND COUNSELORS AT LAW

Margaret M. Fox  
pfox@mcnair.net

www.mcnair.net

The Tower at 1301 Gervais Street  
1301 GERVAIS STREET, 11th FLOOR  
COLUMBIA, SOUTH CAROLINA 29201

POST OFFICE BOX 11390  
COLUMBIA, SOUTH CAROLINA 29211  
TELEPHONE (803)799-9800  
FACSIMILE (803)753-3219

July 11, 2008

Mr. Charles L. A. Terreni  
Chief Clerk/Administrator  
South Carolina Public Service Commission  
Synergy Business Park, The Saluda Building  
101 Executive Center Drive  
Columbia, South Carolina 29210

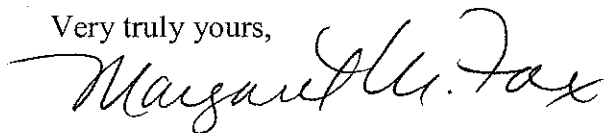
Re: Proceeding to Establish Guidelines for an  
Intrastate Universal Service Fund  
**Docket No. 1997-239-C**

Dear Mr. Terreni:

Enclosed for filing on behalf of the South Carolina Telephone Coalition, please find a Reply to Return to Motion to Dismiss and Return to Motion Requesting Review of Additional USF Issues in the above-referenced matter. By copy of this letter and Certificate of Service, all parties of record are being served by U. S. Mail with a copy of this Reply.

Thank you for your assistance.

Very truly yours,



Margaret M. Fox

MMF/rwm  
Enclosures

cc: Parties of Record

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 1997-239-C

In Re: Proceeding to Establish Guidelines for an )  
Intrastate Universal Service Fund (USF) )  
\_\_\_\_\_ )

**REPLY TO RETURN TO MOTION TO DISMISS AND**  
**RETURN TO MOTION REQUESTING REVIEW**  
**OF ADDITIONAL USF ISSUES**

The South Carolina Telephone Coalition ("SCTC") respectfully submits this filing in response to a pleading filed by the South Carolina Cable Television Association, CompSouth, tw telecom of south carolina, llc, and Nuvox Communications Incorporated ("CLECs"), on July 3, 2008. CLECs' pleading was a combined (1) Return to SCTC's Motion to Dismiss; and (2) Motion Requesting Review of USF Issues. This SCTC pleading is both a (1) Reply regarding SCTC's Motion to Dismiss and (2) Return to CLECs' Motion Requesting Review of USF Issues. Because the Rules of the Public Service Commission of South Carolina ("Commission") provide different time frames for filing Responses and Replies, we are filing this combined pleading within the shorter time period allowed for Replies. See R. 103.829(A), R. 103.831, Rule 6, SCRCP.

This pleading is intended primarily to correct factual misstatements in the pleading filed by CLECs, and to point out that CLECs either are misunderstanding or misconstruing prior PSC Orders, or are rehashing issues that have previously been determined. Because

there is a significant overlap between the facts, suggestions, and arguments included in CLECs' Return and Motion, we will address them together. In reply and in response to CLECs' Return and Motion, SCTC respectfully submits the following:

1. First and foremost, CLECs' suggestions that the State USF is not being administered in an appropriate manner [CLEC Return and Motion at p. 8], and that incumbent local exchange carriers ("ILECs") are not filing the data required of them by the Commission's prior Orders [CLEC Return and Motion at p. 6], are simply unfounded and untrue. The Office of Regulatory Staff ("ORS"), as Administrator of the State USF, can attest that ORS sends out data requests each year to the ILECs, and responses are submitted to ORS by July 1 of each year. The data requests contain all of the information required by Commission Orders to be filed for proper administration of the State USF. Additionally, ORS administers the State USF in compliance with Commission Orders, and subject to both internal and third-party audits.

2. CLECs' insinuations to the contrary indicate that they do not understand or are purposely misconstruing prior Commission Orders. CLECs' suggestion that the State USF is not being administered as intended appears to be based on their unfounded belief that the State USF should decrease over time as the number of access lines served by ILECs decreases. See CLEC Return and Motion at pp. 2, 5-6. This position has been expressly and directly rejected by the Commission as being inconsistent with the concept of universal service funding. As the Commission previously found:

[T]he suggestion that future State USF withdrawals should be adjusted based on the fluctuations in demand for the services reduced is inconsistent with the concept of universal service funding. Universal service support programs identify implicit support and convert it to explicit support so that

the support will remain constant and not erode even if the demand for those services erodes. In this manner, the support that keeps basic local service affordable can be maintained even if the local exchange company loses customers and access revenues, for example as a result of wireless carriers offering regional calling plans. The fact that the LEC's access minutes of use decline in such a scenario is precisely the reason why State USF should remain static so that the support that keeps basic local exchange service affordable does not disappear with the access revenues.

Commission Order No. 2004-452 at pp. 23-24 (emphasis in original).

3. Similarly, CLECs' suggestion that basic local exchange service is somehow not entitled to support when it is offered as part of a "bundle" is perplexing. See CLEC Return and Motion at pp. 2, 5. While the terminology of "bundles" may be more recent, basic local exchange service has always been offered in conjunction with other services, whether they be vertical services like Caller ID or other services like long distance or data services. It is a rare customer who chooses to subscribe to basic local exchange service and nothing more. That is why the Commission properly required ILECs to conduct cost studies to determine the cost of providing only basic local exchange service. As the Supreme Court of South Carolina found, that is exactly what was done. Office of Regulatory Staff v. South Carolina Public Service Comm'n, 647 S.E.2d 223, 232-33 ("There is substantial evidence in the record showing the Commission did allocate joint and common costs to different services and did isolate the cost of providing basic local service.") (Emphasis added.)

4. Likewise, CLECs' argument that the existence of alternative regulation somehow warrants a reexamination of the State USF is without merit, because alternative regulation is nothing new. Several ILECs had already elected alternative regulation under S.C. Code Ann. § 58-9-576 before the State USF was implemented in October 2001. See Docket No. 1999-345-C (BellSouth/AT&T); Docket No. 1998-294-C (United/Embarq);

Docket No. 2000-519-C (Verizon). Furthermore, such plans are an “alternative,” or in lieu of, traditional earnings regulation. See S.C. Code Ann. § 58-9-576(B). As the Commission has previously held, State USF is revenue neutral and does not impact earnings, because each ILEC is required to make dollar-for-dollar reductions in rates containing implicit support before it can withdraw that amount in explicit support from the State USF. See Commission Order No. 2001-419 at p. 42. Thus, the mechanism itself prevents over-recovery from the State USF.

5. CLECs also argue that the Commission has no control over the State USF because the phase-in is “in the hands of the ILECs,” and because the Commission does not require ILECs to report levels of implicit support contained in all of their respective rates. See CLEC Return and Motion at pp. 3, 7. Both of these arguments were expressly made to, and rejected by, the Supreme Court. See 647 S.E.2d at 229-30 (“[Appellants] argue . . . the Commission does not have sufficient control over the establishment, growth or operation of the fund. . . . The record shows the Commission does, in fact, have sufficient control over the size of the fund. . . . Control of the fund is also accomplished through the Commission’s phased-in approach.”); 647 S.E.2d at 230 (rejecting Appellants’ argument that the mechanism lacks specificity and predictability because the term “implicit subsidies” is not defined); see also Brief of South Carolina Cable Television Association, et al., before the Supreme Court, at p. 17 (arguing that the Commission has no control over the State USF because it does not require an examination of the implicit support that exists in ILECs’ “other” rates).

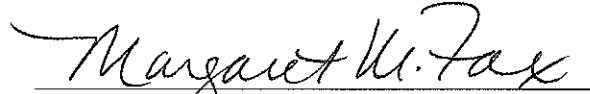
6. CLECs also raise an issue regarding whether wireless carriers who have been designated as eligible telecommunications carriers ("ETCs") should be required to contribute to the State USF. CLECs point to an earlier Commission Order and ask the Commission to take steps to enforce the order. SCTC respectfully submits that the type of proceeding urged by CLECs is not needed in order to enforce the Commission's prior orders. Similarly, as argued in SCTC's Motion to Dismiss, a hearing is not necessary to address the four administrative issues raised by ORS. The Commission has addressed similar administrative and operational issues by way of a declaratory ruling in the past, and can do so in this case, as well as for any future administrative issues that may come up in the day-to-day operation of the State USF.

7. In summary, the pleading filed by CLECs merely rehashes and re-couches the same old arguments the South Carolina Cable Television Association and others have been raising for years in their attempts to first prevent implementation and then to abolish the State USF. These arguments, or variants thereof, have been repeatedly rejected by the Commission, the Circuit Court, and the Supreme Court. The Commission should not reconsider these substantive issues now. The State USF is being operated as intended and in full compliance with prior Commission Orders, as affirmed by the Circuit Court and the Supreme Court; subject to oversight by both ORS and the Commission; and subject to both internal and external audits.

WHEREFORE, for the reasons stated in SCTC's Motion to Dismiss and herein, SCTC respectfully requests that the Commission grant SCTC's motion to dismiss the scheduled proceedings in this matter. Furthermore, for the reasons stated herein, SCTC

requests that the Commission deny CLECs' Motion Requesting Review of USF Issues, and grant such other and further relief as is just and proper.

Respectfully submitted,

A handwritten signature in cursive script that reads "Margaret M. Fox". The signature is written in dark ink and is positioned above a horizontal line.

M. John Bowen, Jr.

Margaret M. Fox

McNAIR LAW FIRM, P.A.

P O Box 11390

Columbia, SC 29211

Tel: (803) 799-9800

Fax: (803) 753-3219

Email: [jbowen@mcnair.net](mailto:jbowen@mcnair.net);

[pfox@mcnair.net](mailto:pfox@mcnair.net)

Attorneys for the South Carolina Telephone  
Coalition

Columbia, South Carolina

July 11, 2008



BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 1997-239-C

IN RE:    Proceeding to Establish Guidelines    )  
          for an Intrastate Universal            )  
          Service Fund                            )  
\_\_\_\_\_ )

**CERTIFICATE  
OF SERVICE**

I, Rebecca W. Martin, Legal Secretary for McNair Law Firm, P. A., do hereby certify that I have this date served one (1) copy of the attached *Reply to Return to Motion to Dismiss and Return to Motion Requesting Review of Additional USF Issues* on behalf of the South Carolina Telephone Coalition in the above-referenced matter on the following parties of record by causing said copy to be deposited with the United States Mail, first class postage prepaid, affixed thereto and addressed as follows:

Nanette S. Edwards, Esquire  
South Carolina Office of Regulatory Staff  
Post Office Box 11263  
Columbia, South Carolina 29211

John J. Pringle, Jr., Esquire  
John F. Beach, Esquire  
Ellis, Lawhorne & Sims, P.A.  
Post Office Box 2285  
Columbia, SC 29202

John M. S. Hoefer, Esquire  
Benjamin P. Mustain, Esquire  
Willoughby & Hoefer, P.A.  
Post Office Box 8416  
Columbia, South Carolina 29202-8416

Anthony Mastando, Esquire  
ITC^DeltaCom Communications  
7037 Old Madison Pike, Suite 400  
Huntsville, AL 35806

Frank R. Ellerbe, III, Esquire  
Bonnie D. Shealy, Esquire  
Robinson, McFadden & Moore, P. C.  
Post Office Box 944  
Columbia, South Carolina 29202

Patrick W. Turner, Esquire  
AT&T South Carolina  
Post Office Box 752  
Columbia, South Carolina 29202

J. Phillip Carver, Esquire  
At&T  
675 West Peachtree Street, N. E .  
Atlanta, Georgia 30375

Sonia Daniels  
Regulatory Specialist  
AT&T Communications of the Southern States, LLC  
1230 Peachtree Street, Fourth Floor  
Atlanta, Georgia 30309

Stan J. Bugner , State Director  
Verizon Select Services, Inc.  
1301 Gervais Street, Suite 825  
Columbia, South Carolina 29201

Steven W. Hamm, Esquire  
Richardson Plowden Carpenter & Robinson, P. A.  
Post Office Drawer 7788  
Columbia, South Carolina 29202

Zel Gilbert  
Sprint United  
1122 Lady Street, Suite 1050  
Columbia, South Carolina 29201

William R. L. Atkinson, Esquire  
Sprint Nextel Corporation  
233 Peachtree Street, N. E.  
Suite 2200  
Atlanta, Georgia 30303

Craig K. Davis, Esquire  
1524 Buck Hill Landing Road  
Ridgeway, South Carolina 29130

Faye A. Flowers, Esquire  
Parker Poe Adams & Bernstein, L.L.P.  
Post Office Box 1509  
Columbia, South Carolina 29202-1509

Burnet R. Maybank, III, Esquire  
Nexsen Pruet Adams Kleemeier, LLC  
Post Office Drawer 2426  
Columbia, South Carolina 29202

Scott Elliott, Esquire  
Elliott & Elliott, P.A.  
721 Olive Street  
Columbia, South Carolina 29205

Robert E. Tyson, Jr., Esquire  
Sowell Gray Stepp & Lafitte, L.L.C.  
Post Office Box 11449  
Columbia, South Carolina 29211

Susan Berkowitz, Director  
SC Appleseed Legal Justice Center  
Post Office Box 7187  
Columbia, South Carolina 29202

Ross Allen Buntrock, Esquire  
Womble Carlyle Sandridge & Rice, PLLC  
1401 Eye Street, Seventh Floor  
Washington, DC 20005



Rebecca W. Martin, Legal Secretary  
McNair Law Firm, P.A.  
Post Office Box 11390  
Columbia, South Carolina  
(803) 799-9800

July 11, 2008

Columbia, South Carolina